Supreme Court, U.S.
FILED
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL WAYNE YOUNG - Petitioner

vs.

STATE OF IOWA - Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

THE COURT OF APPEALS OF IOWA

PETITION FOR WRIT OF CERTIORARI

MICHAEL YOUNG, PRO SE

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QUESTIONS PRESENTED

1. By failing to adhere to Iowa Code § 811.6 (1) ten days' written notice requirement for bond forfeiture proceedings following failure to appear, did the trial court act in excess of its jurisdiction?
2. Did the State of Iowa deprive petitioner of liberty without due process of law in violation of the Fourteenth Amendment to the United States Constitution?
3. Did the State of Iowa violate petitioner's Sixth Amendment to the United States Constitution guaranty to a speedy trial?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits of my case appears at Appendix A to the petition and the status of publication is unknown to petitioner.

JURISDICTION

The date on which the Iowa court of appeals decided my case was December 7, 2005. A copy of that decision appears at Appendix A.

A timely application for further review was filed with the Iowa supreme court. The supreme court of Iowa denied further review on February 7, 2006. A copy of that order appears at Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (a).

Mr. Justice Bradley, speaking for the whole court, after observing that the federal courts had an independent jurisdiction in the administration of state laws, co-ordinate with and not subordinate to that of the state courts, and are bound to exercise their own judgment as to the meaning and effect of these laws, said: "So, when contracts and transactions have been entered into, and rights have accrued thereon, under a particular state of the decisions, or where there has been no decision of the state tribunals, the federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the state courts after such rights have accrued. But even in such cases, for the sake of harmony and to avoid confusion, the federal courts will lean to an agreement of views with the state courts if the question seems to be balanced with doubt." *Anderson v. Township of Santa Anna*, 116 U.S. 356, 362, 6 S.Ct. 413, 416, 29 L.Ed. 633, 635 (1886) (citation omitted).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Iowa Code § 811.6 (1)

Iowa Code § 811.7 (1)

Iowa Rule of Criminal Procedure 2.33

United States Constitution, Fourteenth Amendment § 1

United States Constitution, Sixth Amendment

STATEMENT OF THE CASE

This case is a bail bond contract dispute between petitioner and the State of Iowa. Petitioner breached the bail bond contract by failure to appear for a pretrial conference after not receiving a pretrial order setting the dates of pretrial conference and trial. The State of Iowa breached the bail bond contract by failing to send statutory ten days' written notice to petitioner and petitioner's surety after entry of failure to appear.

On February 20, 2004, petitioner was arrested for assaulting an officer. Petitioner was released on bail on February 23. The State filed a trial information on March 30. Petitioner was arraigned on April 20. Later on April 20, the court filed an arraignment order setting pretrial conference for May 4 and setting

trial for May 17. Petitioner failed to appear for pretrial conference on May 4. (court of appeals opinion, appendix A2-3).

Petitioner did not receive the arraignment order filed on April 20 until August 2. (affidavit, appendix D5-6).

The trial court made entry of failure to appear; however, as part of the entry, the trial court failed to instruct the clerk of court to send statutory ten days' written notice to petitioner and petitioner's surety to appear and show cause why judgment should not be rendered for the amount of bail; Iowa Code § 811.6 (1); furthermore, the clerk did not serve petitioner with the entry of failure to appear. (entry of failure to appear, appendix F).

Petitioner's 90-day speedy trial period expired on June 28. On August 2, petitioner was arrested, and released, when he went to the courthouse to inquire about his case. (court of appeals opinion, appendix A3).

Petitioner filed a motion to dismiss the case for violation of his right to due process and right to a speedy trial. (motion to dismiss, appendix D; memorandum, appendix E; court of appeals opinion, appendix A3). The trial court denied the motion. (order re: motion to dismiss, appendix C).

Petitioner filed an interlocutory appeal with the Iowa supreme court which was denied. Trial occurred and petitioner was found guilty. Petitioner appealed. (court of appeals opinion, appendix A3).

After the appeal was denied by the Iowa court of appeals, Petitioner applied to the Iowa supreme court for further review which was denied on February 7, 2006. (order, appendix B).

REASONS FOR GRANTING THE PETITION

I.

Prisoners are entitled to more due process of law to dispute transfer from prison to a mental hospital than petitioner was afforded regarding failure to appear; see *Vitek v. Jones*, 445 U.S. 480, 494-95, 100 S.Ct. 1254, 1264-65, 63 L.Ed.2d 552, 566 (1980) (minimum procedures States are required to observe before transferring a prisoner to a mental hospital include: *written notice*, a hearing, opportunity to present testimony, independent decision maker, written findings of fact, availability of legal counsel, timely *notice* of the foregoing rights).

Irregardless of the reason for petitioner's failure to appear, due process of law guarantees petitioner the right to be timely

heard after entry of failure to appear. See final reply brief, appendix G.

The trial court and the prosecution condemned petitioner to suffer the loss of being labeled a fugitive and to suffer the loss of a speedy trial within 90-days of indictment by failing to send statutory ten days' written notice after entry of failure to appear. See *Matter of Guardianship of Hedin*, 528 N.W.2d 567, 574 (Iowa 1995) ("where the State attaches a 'badge of infamy' to the citizen, due process comes into play. [T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." (quoting from *Wisconsin v. Constantineau*, 400 U.S., at 437, 27 L.Ed.2d, at 519, 91 S.Ct. 507 (1971)); and, *Johnson v. Overberg*, 639 F.2d 326, 327 (6th Cir. 1981) (Ohio legislature granted petitioner liberty interest when it required that he be tried within 90 days of his arrest and this liberty interest could not be denied without due process of law).

"A defendant has no duty to bring himself to trial: the State has that duty as well as the duty of insuring that the trial is

consistent with due process." *Barker v. Wingo*, 407 U.S. 514, 527, 33 L.Ed.2d 101, 115, 92 S.Ct. 2182 (1972) (footnotes omitted). "Furthermore, the Due Process Clause always protects defendants against fundamentally unfair treatment by the government in criminal proceedings." *Doggett v. United States*, ___ U.S. ___, ___, 120 L.Ed.2d 520, 537, 112 S.Ct. 2686 (1992) (Mr. Justice Thomas, dissenting).

II.

The Iowa court of appeals rendered a decision that allows trial courts and prosecutors to illegally modify bail bond contracts; AND, Iowa courts and prosecutors do not have to notify defendants or defendants' sureties of the bond modification.

a.

"[A] bail bond is a contract between the government and the defendant and his surety. [citation]. Accordingly, courts [*should*] apply general principles of contract construction when interpreting bail bonds. [citations]." *U.S. v. Toro*, 981 F.2d 1045, 1047 (9th Cir. 1992).

Iowa Code § 811.6 (1) set forth the State of Iowa's contractual obligation to send petitioner and petitioner's surety ten

days' written notice after entry of failure to appear. Petitioner "[has] a right to stand upon the very terms of their undertaking." *Reese v. United States*, 9 Wall. (76 U.S.) 13, 21, 19 L.Ed. 541, 544 (1869).

> * * *. As part of the entry [of failure to appear], except as provided in rule of criminal procedure 2.72, the court shall direct the clerk of the district court of the county to give ten days' notice in writing to the defendant and the defendant's sureties to appear and show cause, if any, why judgment should not be entered for the amount of bail. * * *. Iowa Code § 811.6 (1).[1]

In this case, the trial court failed to include, as part of the entry of failure to appear, instructions to the clerk to send ten days' written notice to petitioner and petitioner's surety. See entry of failure to appear, appendix F. The decision rendered by the Iowa court of appeals grants trial courts and prosecutors arbitrary discretion to disregard statutory notice requirements following

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[1] R.Cr.P 2.72 applies to simple misdemeanor cases only; the charge in this case is a serious misdemeanor.